



**THE ATTORNEY GENERAL
OF TEXAS**

February 21, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Mark Edwards
Reagan County Attorney
P. O. Box 924
Big Lake, Texas 56932

LO-89-16

Dear Mr. Edwards:

You ask whether the county is liable for the fee of a law firm employed by the district attorney to represent the state in appeals from the 112th Judicial District Court of Reagan County. You advise that the district attorney employed the law firm without "notice or prior approval of the Commissioners Court of Reagan County" and that the law firm has submitted "a rather large bill" to Reagan County for the work it has done in representing the state in those appeals.

Section 43.152 of the Government Code provides that the commissioners court(s) in the 112th Judicial District¹ may supplement the state salary of the district attorney by an additional \$4,800 a year. Section 41.102 of the Government Code authorizes the district attorney to employ assistants and other personnel. Section 41.106 of the Government Code allows the district attorney to set their salaries, "subject to the approval of the commissioners court of the county or counties composing the district." Section 41.107 of the Government Code provides that the commissioners court may furnish certain supplies and may pay the expenses incident to the operation of the office.

Article 2.01 of the Code of Criminal Procedure sets forth the duties of the district attorney as follows:

Each district attorney shall represent the
State in all criminal cases in the district
courts of his district and in appeals

1. The 112th Judicial District is comprised of
Crockett, Pecos, Reagan, Sutton and Upton Counties.

therefrom, except in cases where he has been, before his election, employed adversely. When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus, and he is notified of the same, and is at the time within his district, he shall represent the State therein, unless prevented by other official duties. It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused. (Emphasis added.)

In Attorney General Opinion JM-661 (1987) it was concluded that the Commissioners Court of Ector County lacked specific authority to contract with outside counsel to handle bond forfeitures since the district and county attorney were responsible for representing the state in all criminal cases.²

In Attorney General Opinion H-544 (1975) it was stated that there was no statutory authority to employ a private attorney to assist in the conduct of a court of inquiry since it was the duty of the district and county attorneys to investigate and prosecute the violation of all criminal laws.

Article 2.01 makes the district attorney responsible for representing the state "in all criminal cases in the district courts of his district and in appeals therefrom." Section 42.005 of the Government Code provides that the state prosecuting attorney may assist a district or county attorney in representing the state before a court of appeals if requested to do so by the district or county attorney.

Since there is no statutory authority for the commissioners court or the district attorney to contract with outside counsel to handle appeals from the district

2. It was noted in Attorney General Opinion JM-661 that if the attorney representing the state is disqualified, absent or otherwise unable to perform the duties of his office, an attorney pro tem may be appointed under article 2.07 of the Code of Criminal Procedure and compensated in the same amount and manner as an attorney appointed to represent the state.

Honorable Mark Edwards
February 21, 1989
Page 3

court, the commissioners court is not liable for the fees and expenses of a law firm as the result of a contract entered into by the district attorney with a law firm to handle appeals from the district court.

Since you indicate that the law firm has submitted a bill for work it has done, a question of liability for benefits received under an implied contract may be an issue. A county may not be held liable upon an implied contract or under the theory of quantum meruit unless the commissioners court was authorized to make the contract sought to be implied. 52 Tex. Jur. 3d Municipalities, § 380.

Very truly yours,



Tom G. Davis
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

TGD/SW/bc

Ref.: RQ-1648
ID# 5453